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8 **UNITED STATES DISTRICT COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION**
10

11 GENEXA INC,
12 Plaintiff,
13 v.
14 KINDERFARMS LLC,
15 Defendant.
16

CASE NO. 2:22-cv-09291

**DEFENDANT KINDERFARM'S
REQUEST FOR JUDICIAL
NOTICE IN SUPPORT OF ITS
MOTION TO DISMISS, MOTION
TO STRIKE, AND SPECIAL
MOTION TO STRIKE (ANTI-
SLAPP)**

*[Filed Concurrently with Notice of
Motion and Motion to Dismiss
Plaintiff's Complaint; Motion to Strike
and Special Motion to Strike (Anti-
SLAPP); Memorandum of Points and
Authorities; Declaration of David W.
Schechter; and [Proposed] Order]*

Hearing Date: February 13, 2023
Hearing Time: 10:00 am
Courtroom: 5A

Complaint Filed: December 22, 2022
Trial Date: Not yet set

Assigned to: The Honorable Michael
W. Fitzgerald and Magistrate Judge
Steve Kim

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Defendant KinderFarms LLC (“Defendant” or “KinderFarms”) hereby submits this Request for Judicial Notice pursuant to Rule 201 of the Federal Rules of Evidence in support of its Motion to Dismiss, Motion to Strike, and Special Motion to Strike Plaintiff Genexa Inc.’s Complaint:

EXHIBIT	DESCRIPTION	PG. NO.
A	Image of Genexa, Inc.’s Kids’ Cough & Chest Congestion, at: <i>https://www.genexa.com/products/kids-cough-chest-congestion-liquid</i>	4 – 5
B	Image of KinderMed’s Kids’ Cough & Congestion, at: <i>https://kinderfarms.com/products/kindermed-kids-cough-congestion</i>	6 – 7

I. LEGAL STANDARDS

A court can take judicial notice of relevant facts that are “not subject to reasonable dispute.” (Fed. R. Evid. 201(b).) This includes facts that “can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned.” (Fed. R. Evid. 201(b)(2).) court “must take judicial notice if a party requests it and the court is supplied with the necessary information.” (Fed. R. Evid. 201(c)(2).)

In evaluating a Rule 12(b)(6) motion, the court considers the complaint as well as “material which is properly submitted as part of the complaint,” which means the documents are either “physically attached to the complaint” or the “complaint necessarily relies” on them and their authenticity is not contested. *Lee v. City of Los Angeles*, 250 F.3d 668, 688 (9th Cir. 2001). “Even if a document is not attached to a complaint, it may be incorporated by reference into a complaint if the plaintiff refers extensively to the document or the document forms the basis of the

1 plaintiff's claim." *United States v. Ritchie*, 342 F.3d 903, 908 (9th Cir. 2003).

2 **II. DOCUMENTS SUBJECT TO JUDICIAL NOTICE**

3 Exhibit A is an image of Plaintiff Genexa's "Kids' Cough & Chest
4 Congestion" product. Exhibit B is an image of Defendant KinderFarms' "Kids'
5 Cough & Congestion" product. The Court may take judicial notice of such material
6 as an indication of information available in the public realm. *See Von Saher v.*
7 *Norton Simon Museum of Art at Pasadena*, 592 F.3d 954, 960 (9th Cir. 2010). In the
8 Complaint and in support of their Lanham Act, false advertisement, and unfair
9 competition claims, Plaintiff relies on and references Genexa's and KinderFarms'
10 entire lines of OTC medicine products, including the cough and congestion
11 medicines pictured in Exhibits A and B. (Compl. ¶¶ 21, 35, 49.)

12 **III. CONCLUSION**

13 Defendant respectfully requests that the Court consider Exhibits A and B in
14 ruling on Defendant's Motion to Dismiss, Motion to Strike, and Special Motion to
15 Strike.

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19 DATED: January 13, 2022

MILLER BARONDESS, LLP

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22 By: _____

23 DAVID W. SCHECTER
24 Attorneys for Defendants
25 KINDERFARMS LLC
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